

ANDREW GALE,	:	CIVIL NO. 1:12-CV-1315
	:	
Petitioner	:	(Judge Rambo)
	:	
v.	:	(Magistrate Judge Blewitt)
	:	
GERALD ROZUM, <i>et al.</i>,	:	
	:	
Respondents	:	

Before the court is a report and recommendation of the magistrate judge (doc. 10) to whom this matter was referred in which he recommends that Petitioner Andrew Gale's third § 2254 petition (doc. 6) be dismissed as untimely and as a second or successive § 2254 petition. The magistrate judge further recommends that Gale's "Motion for Stay and Abeyance" (doc. 1) be denied as moot.

Gale filed objections to the report and recommendation on October 15, 2012. Essentially he is claiming that his petition was timely filed in accordance with *Martinez v. Ryan*, ___ U.S. ___, 132 S. Ct. 1309 (2012). He claims *Martinez* allows habeas relief for his procedurally defaulted claim by showing cause for the default and prejudice, and a violation of federal law. The magistrate judge addressed this issue in the report and recommendation, and citing to other cases, found that the *Martinez* case was inapplicable to Gale. (Doc. 10 at pp. 11-13.)

The balance of Gale's objections are arguments in support of the merits of his habeas petition and are not proper objections. The report and recommendation will be adopted. An appropriate order will be issued.

s/Sylvia H. Rambo
United States District Judge

Dated: November 9, 2012.

ANDREW GALE,

Petitioner

V.

GERALD ROZUM, *et al.*,

Respondents

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CIVIL NO. 1:12-CV-1315

(Judge Rambo)

(Magistrate Judge Blewitt)

ORDER

In accordance with the accompanying memorandum, **IT IS HEREBY ORDERED THAT:**

- 1) The court adopts the report and recommendation of Magistrate Judge Blewitt.
- 2) Respondents' motion to dismiss (doc. 9) is **GRANTED**.
- 3) Petitioner's third § 2254 habeas petition (doc. 6) is **DISMISSED** as an untimely and successive petition.
- 4) Petitioner's "Motion for Stay and Abeyance" (doc. 1) is deemed moot.
- 5) This court declines to issue a certificate of appealability.
- 6) The Clerk of Court shall close the file.

s/Sylvia H. Rambo
United States District Judge

Dated: November 9, 2012.